



# California Fair Political Practices Commission

August 9, 1988

Honorable Pat Miranda  
Mayor, City of Irwindale  
5050 North Irwindale Avenue  
Irwindale, CA 91706

Re: Your Request for Informal  
Assistance  
Our File No. I-88-253

Dear Mayor Miranda:

You have requested advice concerning your duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter requests only general advice; it does not concern a specific decision pending before the city. Accordingly, we consider it to be a request for informal assistance pursuant to Regulation 18329(c).<sup>2/</sup>

## QUESTION

You own commercial real property in the City of Irwindale. You have asked if you may participate in decisions concerning development of four other parcels in the city. The first parcel is across the street from your property. The second parcel is approximately one mile from your property. The third parcel is approximately three miles from your property. The developer of the first parcel also owns the second and third parcels. The fourth parcel is owned by another developer. It consists of 100 or more acres and is approximately 800 feet from your property.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

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### CONCLUSION

You are required to disqualify yourself from participating in any decision that would foreseeably and materially affect your real property. Based on the facts provided in your letter, you generally are required to disqualify yourself from decisions concerning the first and fourth parcels. Absent unusual circumstances, you generally may participate in decisions involving the second and third parcels.

### FACTS

You own a vacant lot located at the southeast corner of Irwindale Avenue and Arrow Highway. You have leased this property to Irwindale Associates, which plans to develop the property. You intend to disqualify yourself from any decisions of the city council concerning either Irwindale Associates or the development of your property.

There are several other properties in Irwindale which currently are being developed or which probably will be developed in the near future. You have asked whether you may participate in city council decisions concerning four of these parcels.

The first parcel ("parcel #1") is located across the street from your commercial property. It is being developed by Birtcher Development Company ("Birtcher"). Based on the advice of the city attorney, you have abstained from voting on decisions concerning this parcel.

The second and third parcels ("parcel #2" and "parcel #3") mentioned in your letter are ones that Birtcher probably will develop. Parcel #2 is located approximately one mile from your property and parcel #3 is located approximately three miles from your property.

The fourth parcel ("parcel #4") is owned by CalMat. It is approximately 100 acres in size. The northeast corner of parcel #4 is located approximately 800 feet from your commercial property. CalMat plans to develop parcel #4 in the future.

### ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable

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from the effect on the public generally, on, among other economic interests, any real property in which the official has an interest worth \$1,000 or more. (Section 87103(b).)

As mayor of Irwindale, you are a public official. (Section 82048.) You own commercial property which is worth \$1,000 or more. Thus, you are required to disqualify yourself from participating in any governmental decision which would foreseeably and materially affect your commercial property.<sup>3/</sup>

The effect of a decision is "reasonably foreseeable" if there is a substantial likelihood that it will occur. Certainty is not required; however, if an effect is but a mere possibility, it is not foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198.)

To require your disqualification, a decision must have both a foreseeable and a material effect on your real property. Regulation 18702 (copy enclosed) provides monetary guidelines for determining whether an effect on real property is considered material. These guidelines are based on the increase or decrease in the fair market value of the official's property.

For example, if the fair market value of your property is \$200,000 or less, a decision which would increase or decrease the value of your property by at least \$1,000 would be a material effect on your property. (An effect of less than \$1,000 is never material.) If the fair market value of your property is between \$200,000 and \$2,000,000, an increase or decrease in the value of the property by one-half of one percent would be considered a material effect. If the fair market value of your property is \$2,000,000 or more, a \$10,000 increase or decrease in the value of the property would be considered material. If, based on these monetary guidelines, it is foreseeable that a proposal to develop another parcel would materially affect the value of your commercial property, you are required to disqualify yourself from participating in city council decisions on the proposed development.

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<sup>3/</sup> The Commission has ruled that commercial property owners are not the public generally. (In re Owen (1976) 2 FPPC Ops. 77, 81-82.) Therefore, most decisions which foreseeably and materially affect a commercial property owner will have an effect distinguishable from the effect on the public generally. For this reason, we will provide no further analysis of the "public generally" exception in this letter.

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Decisions concerning development of real property in close proximity to your commercial property are the most likely to materially affect the use and value of your property. Accordingly, the distance between your property and another parcel that is the subject of a city council decision is an important factor in determining whether you must disqualify yourself from a city council decision.

However, distance is only one factor to consider for conflict of interest purposes. Other factors to consider include the size and nature of the proposed development. For example, if the lessee of your real property were to construct a hotel on your property, a proposal to build a competing hotel on another parcel probably would affect the value of your property, whether the competing hotel was located across the street from your property or one mile away. In contrast, an office building project located one mile away from your property would be less likely to affect the use of your property for hotel purposes than would an office building project located across the street from your property. Accordingly, it is not possible to use the distance between your property and a proposed development as the sole basis for determining whether you may participate in a decision on the proposed development.<sup>4/</sup>

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<sup>4/</sup> The Commission recently approved a new regulation which specifically uses distance as a factor in defining a material financial effect on real property. (Regulation 18702.3, copy enclosed.) We anticipate that the new regulation will become effective sometime in October.

Under this new regulation, you generally are required to disqualify yourself from decisions concerning a development project if any portion of the project is located within a 300-foot radius of the boundaries of your commercial property. In contrast, you generally may participate in decisions concerning development projects located entirely beyond a 2,500-foot radius of the boundaries of your commercial property. If a decision concerns real property located between 300 and 2,500 feet from your commercial property, you may participate in the decision unless it would increase or decrease the fair market value of your property by \$10,000 or more.

As you requested in your letter, we have drawn the green circles on the map you provided to indicate approximately the 300-foot and 2,500-foot boundaries. Again, we emphasize that the 300-foot and 2,500-foot boundaries are not conclusive for purposes of determining whether you have a conflict of interest.

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Based on the facts provided in your letter, we conclude that decisions concerning parcel #1, which is located across the street from your commercial property, generally will have a foreseeable and material effect on the value of your commercial property. Similarly, because of the size of parcel #4 and its proximity to your commercial property, decisions concerning development of parcel #4 generally will have a foreseeable and material effect on the value of your commercial property.

The distance between your property and parcels #2 and #3 is much greater. Therefore, absent unusual circumstances, the development of those parcels is unlikely to have a foreseeable material effect on your commercial property. The fact that Birtcher owns both those parcels and parcel #1 does not automatically prevent you from participating in decisions to develop parcels #2 and #3. However, if the city council decisions to develop parcels #2 and #3 are linked to development of parcel #1, you may be required to disqualify yourself from the decisions to develop parcels #2 and #3.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

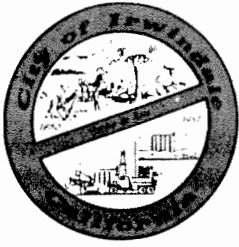
Diane M. Griffiths  
General Counsel

*Kathryn E. Donovan*  
by DMG

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:plh

Enclosures



# CITY OF IRWINDALE

5050 NORTH IRWINDALE AVENUE • IRWINDALE, CALIFORNIA 91706  
(818) 962 3381

June 28, 1988

Kathryn E. Donovan  
Counsel  
Legal Division  
California Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Dear Ms. Donovan:

I had a lunch stand (Pudgy's Burgers and Tacos) at the southeast corner of Irwindale Avenue and Arrow Highway (marked 1 in red on the map). I leased the property to Irwindale Associates. They have knocked the building down and what is left is a vacant lot. I hear they want to build fast for the building to lease. I understand that if Irwindale Associates brings any request before the Council I have to abstain.

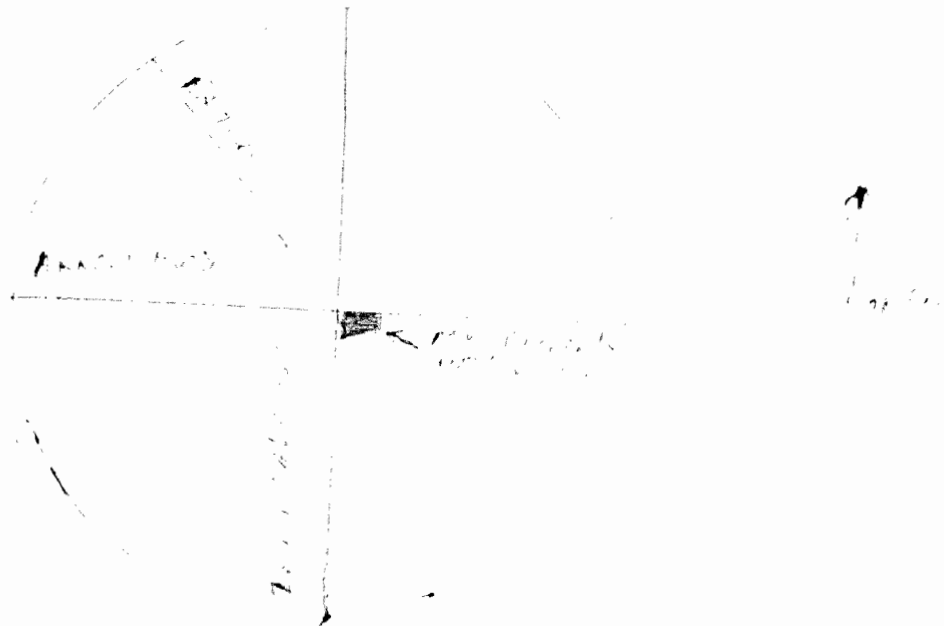
Birtcher Development Co. has developed the northeast corner of Irwindale Avenue and Arrow Highway (marked 2 in red on the map). I have abstained on the Birtcher Development because our City Attorney, Mr. Charles Martin, said it could affect the value of my property. If Birtcher develops other areas (such as areas #4 and #5 on the attached map), do I have to abstain on those areas because Birtcher has the development across the street from my commercial property at the corner of Irwindale Avenue and Arrow Highway.

CalMat has dug out the rock and sand from the land marked 3 in red on the map. It is a pit. They are putting in inert material to fill it up. When they fill the pit to where they can build they will come before the Council to develop that area (about 100 or more acres). The northeast corner of that pit is about 800 feet from my commercial property at Irwindale Avenue and Arrow Highway.

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I would like to know if you could give me an idea as to how far from my commercial property I should abstain on my vote. Such as a radius as to how far I am affected in voting. I am sending you 2 maps; one for you to keep and one so that you could indicate what radius from my commercial business I should abstain from voting.

*1 inch = 1650 feet (ON THE MAP)*



Numbers on map in red:

- 1) My property (Pudgy's Burgers and Tacos) which is now vacant land
- 2) Birtcher Development
- 3) CalMat dug up pit. Future possible development

Very truly yours,

*Pat S. Miranda*  
Pat S. Miranda  
Mayor, City of Irwindale